

Appl. No. 10/809,390  
Amdt. Dated June 16, 2004  
Reply to Office Action of January 19, 2005

## REMARKS

### Claim Objections

The Examiner has objected to claim 1 for not ending in a period. Claim 2 is objected to as being dependent on a rejected base claim. Claim 1 has been amended to add a period. Claim 2 has been canceled.

### Claim Rejections

#### 35 U.S.C. 112 Rejection

Claims 4 and 7 stand rejected under 35 U.S.C. 112 as being indefinite. Reconsideration is respectfully requested in light of the amendments made to claims 4 and 7. More specifically, claims 4 and 7 have been amended to state that the upper and lower support brackets are adapted to hold the back joist. With the inclusion of the phrase "are adapted to" it is respectfully submitted that there is no longer any confusion with respect to the elements that the applicant wishes to positively claim.

#### 35 U.S.C. 103 Rejection

Claims 1-8 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US D348,216) in view of Schoenecke (855,817). Claims 2 and 6 have been canceled, the elements claimed therein being incorporated into independent claims 1 and 5. Additional amendments to the claims have also been made as shown in the list of claims and as described in more detail below, and the applicant respectfully requests reconsideration for the reasons set out below.

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While Schoenecke appears to disclose a pair of intersecting cross members, these cross members are positioned on opposed sides of a pair of legs and are formed of two separate members. In contrast, the intersecting cross members of the subject invention are integrally formed and a limitation to that effect has been added to claims 1 and 5. It is respectfully submitted that it would not be obvious to combine the teachings of Schoenecke with those of Smith to come to the integrally formed intersecting cross members of the claimed invention.

In order to further distinguish the claimed invention from that taught by Smith, additional limitations relating to the lower back joist support portion have been added. In Smith, the lower back joist support portion is formed solely of two spaced tabs extending from a first side of the bracket: there is no base surface extending between the tabs. As shown in Fig. 2, a downwardly extending portion extends below the bottom surface below the first side of the bracket. A small flange extends from the downwardly extending portion to provide a step upon which to place the end of a back joist connected to the bracket. The Smith design suffers from a number of drawbacks. First, by placing the downwardly extending portion below the first side of the bracket, there is less of the bottom portion to be attached to a deck surface. This results in both a weaker connection and in moving the center of gravity of the unit further back towards the edge of, or off the edge of the deck, which in turn causes an increased chance that the bracket can be torn from the deck as a result of forces applied to it. Second, the small flange extending from the downwardly extending portion can be easily damaged when a back joist is being fitted to the bracket. Third, the tabs of the lower back joist support are more susceptible to being damaged from lateral forces applied to them.

In contrast, the lower back joist support portion of the subject invention is formed of two spaced tabs having a base surface connected to and extending therebetween. The base

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surface provides a step upon which to place the end of a back joist connected to the bracket and provides increased structural rigidity to the tabs, reducing their susceptibility to lateral forces. The downwardly extending portion extends below the base surface and is laterally offset from the first side, thereby increasing the relative size of the base portion and moving the center of gravity of the unit and the downward forces to be applied to it more over the deck itself. Limitations covering these additional elements have been added to the claims, as shown in the listing of claims set out above.

Claim 9 stands rejected as being unpatentable over Smith in view of Schoenecke and Boisvert (4,285,542). Claim 9 has been amended to incorporate similar changes to claims 1 and 5, and for the reasons set out above for claims 1 and 5, should also be allowable.

### CONCLUSION

The Applicant submits that the claims are in condition for allowance and respectfully requests that a Notice of Allowance be issued in this case.

Date: June 16, 2005

Respectfully submitted,



John Gross